

SENATE BILL No. 495

September 24, 1991, Introduced by Senator DILLINGHAM and referred to the Committee on Health Policy.

A bill to amend sections 21702, 21766, 21775, and 21799c of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," being sections 333.21702, 333.21766, 333.21775, and 333.21799c of the Michigan Compiled Laws; and to add section 21765a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21702, 21766, 21775, and 21799c of Act
2 No. 368 of the Public Acts of 1978, being sections 333.21702,
3 333.21766, 333.21775, and 333.21799c of the Michigan Compiled
4 Laws, are amended and section 21765a is added to read as
5 follows:

6 Sec. 21702. (1) "Discharge" means the voluntary or invol-
7 untary movement of a patient out of a nursing home regardless of
8 the individual's destination or reason for the movement.

1 (2) "Full-time" means being usually present in the nursing
2 home or conducting or participating in activities directly
3 related to the nursing home during the normal 40-hour business
4 week.

5 (3) "Involuntary transfer" means a transfer not agreed to in
6 writing by the patient or, in the case of a plenary guardianship,
7 by the patient's legal guardian.

8 (4) "MEDICAID" MEANS THE PROGRAM FOR MEDICAL ASSISTANCE
9 ESTABLISHED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, CHAPTER
10 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396f, AND 1396i TO 1396u,
11 AND ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES UNDER THE
12 SOCIAL WELFARE ACT, ACT NO. 280 OF THE PUBLIC ACTS OF 1939, BEING
13 SECTIONS 400.1 TO 400.121 OF THE MICHIGAN COMPILED LAWS.

14 (5) ~~-(4)-~~ "Medical reasons" means a medical justification
15 for either of the following:

16 (a) The transfer or discharge of a patient in accord with
17 the written orders of the attending physician ~~which~~ THAT is
18 written into the patient's clinical record by the physician in
19 the progress notes.

20 (b) The transfer or discharge of a patient who is a medicaid
21 recipient due to a change in level of care required by the
22 patient and ~~the fact that~~ the nursing home or nursing care
23 facility ~~is not certified~~ LACKS CERTIFICATION to provide the
24 needed level of care.

25 (6) "MEDICARE" MEANS THAT TERM AS DEFINED IN SECTION 2701.

26 (7) ~~-(5)-~~ "Modification of a license" means an action by the
27 department to alter the number of beds, the levels of care, the

1 portions of the physical plant ~~which~~ THAT may be operated or
2 maintained by a licensee in a particular nursing home, or to
3 restrict the nursing home from engaging in activity ~~violative~~
4 ~~of~~ THAT VIOLATES this ~~act~~ ARTICLE or a rule promulgated under
5 this ~~act~~ ARTICLE.

6 (8) ~~(6)~~ "Negative case action" means an action taken by
7 the department of social services to deny an application for med-
8 ical assistance, cancel medical assistance, or reduce medical
9 assistance coverage.

10 (9) ~~(7)~~ "Nonpayment" means:

11 (a) ~~With respect to a nonmedicaid patient, failure~~ FAILURE
12 to collect from ~~the~~ A NONMEDICAID patient or any other source
13 the full amount of the facility charges to the patient ~~agreed~~
14 ~~upon in writing at admission or subsequently~~ PURSUANT TO A WRIT-
15 TEN AGREEMENT ENTERED AT OR AFTER THAT PATIENT'S ADMISSION TO THE
16 FACILITY.

17 (b) ~~With respect to a medicaid patient, failure~~ FAILURE to
18 collect ~~the~~ A MEDICAID patient's stipulated contribution toward
19 his or her care.

20 (10) "PRIVATE PAY RATE" MEANS THE AMOUNT CHARGED BY A NURS-
21 ING HOME FOR THE CARE OF A PATIENT WHO IS NOT ENTITLED TO STATE
22 OR FEDERAL BENEFITS FOR THAT PATIENT'S NURSING HOME CARE.

23 SEC. 21765A. (1) A NURSING HOME SHALL NOT REQUIRE AN APPLI-
24 CANT, AS A CONDITION OF ADMISSION, TO WAIVE HIS OR HER RIGHT TO
25 BENEFITS UNDER MEDICARE OR MEDICAID, TO GIVE ORAL OR WRITTEN
26 ASSURANCE THAT THE APPLICANT IS NOT ELIGIBLE FOR MEDICARE OR

1 MEDICAID, OR TO GIVE ORAL OR WRITTEN ASSURANCE THAT THE APPLICANT
2 WILL NOT APPLY FOR BENEFITS UNDER MEDICARE OR MEDICAID.

3 (2) A NURSING HOME SHALL NOT DO ANY OF THE FOLLOWING AS A
4 CONDITION OF AN APPLICANT'S ADMISSION OR A PATIENT'S CONTINUED
5 RESIDENCY AT THAT NURSING HOME:

6 (A) REQUIRE AN APPLICANT OR PATIENT TO REMAIN A PRIVATE PAY
7 PATIENT FOR A SPECIFIED PERIOD OF TIME BEFORE APPLYING FOR
8 MEDICAID.

9 (B) REQUIRE A PERSON TO PAY ON BEHALF OF AN APPLICANT OR
10 PATIENT THE PRIVATE PAY RATE FOR A SPECIFIED PERIOD OF TIME
11 BEFORE THE APPLICANT OR PATIENT APPLIES FOR MEDICAID.

12 (C) REQUIRE AN APPLICANT, PATIENT, OR OTHER PERSON TO MAKE A
13 GIFT OR DONATION ON BEHALF OF THAT APPLICANT OR PATIENT.

14 (3) AS OF THE EFFECTIVE DATE OF THIS SECTION, A CONTRACT
15 PROVISION OR AGREEMENT IN CONFLICT WITH SUBSECTION (1) OR (2),
16 WHETHER MADE BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS SEC-
17 TION, IS UNENFORCEABLE.

18 (4) NOT LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS
19 SECTION, A NURSING HOME THAT PARTICIPATES IN MEDICAID SHALL PRO-
20 VIDE WRITTEN NOTICE TO EACH PRIVATE PAY PATIENT SUBJECT TO A CON-
21 TRACT PROVISION OR AGREEMENT IN CONFLICT WITH SUBSECTION (1) OR
22 (2) THAT THE CONTRACT PROVISION OR AGREEMENT IS NO LONGER A BAR
23 TO THE PATIENT APPLYING FOR MEDICAID.

24 (5) A NURSING HOME THAT PARTICIPATES IN MEDICAID SHALL NOT
25 TRANSFER OR DISCHARGE A PATIENT, OR RELOCATE A PATIENT WITHIN
26 THAT NURSING HOME, BECAUSE THAT PATIENT APPLIES FOR, BECOMES
27 ELIGIBLE FOR, OR RECEIVES MEDICAID BENEFITS.

1 Sec. 21766. (1) A NURSING HOME EMPLOYEE MAY REQUEST THE
2 APPOINTMENT OF A GUARDIAN FOR AN INDIVIDUAL APPLICANT OR PATIENT
3 ONLY IF THE NURSING HOME EMPLOYEE REASONABLY BELIEVES THAT THE
4 INDIVIDUAL MEETS THE LEGAL REQUIREMENTS FOR THE APPOINTMENT OF A
5 GUARDIAN.

6 (2) ~~-(1)-~~ A NURSING HOME SHALL EXECUTE A written contract
7 ~~shall be executed before~~ SOLELY WITH AN APPLICANT OR PATIENT OR
8 THAT APPLICANT'S OR PATIENT'S GUARDIAN, AT EACH OF THE FOLLOWING
9 TIMES:

10 (A) BEFORE the time ~~a person~~ AN INDIVIDUAL is admitted to
11 a nursing home. ~~at~~

12 (B) AT the expiration of the term of a previous contract.
13 ~~or at~~

14 (C) AT the time the source of payment for the patient's care
15 changes. A ~~patient shall not be discharged or transferred~~
16 NURSING HOME SHALL NOT DISCHARGE OR TRANSFER A PATIENT at the
17 expiration of the term of a contract, except as provided in sec-
18 tion 21773.

19 ~~-(2) The contract shall be executed between the person seek-~~
20 ~~ing admission or the person's guardian and the nursing home.~~

21 (3) A NURSING HOME SHALL PROVIDE A copy of the contract
22 ~~shall be given~~ to the patient, ~~or to~~ the patient's
23 representative, or THE PATIENT'S legal guardian at the time ~~of~~
24 ~~the patient's admission to the nursing home~~ THAT CONTRACT IS
25 EXECUTED.

26 (4) ~~A copy of the contract for~~ FOR a patient supported by
27 funds other than the patient's own funds, A NURSING HOME shall

1 ~~be made~~ MAKE available A COPY OF THE CONTRACT to the person
2 providing the funds for the patient's support.

3 (5) ~~A copy of the contract for~~ FOR a patient whose care is
4 reimbursed with public funds administered by the department of
5 social services, A NURSING HOME SHALL MAINTAIN A COPY OF THE CON-
6 TRACT IN THE PATIENT'S FILE AT THE NURSING HOME AND UPON REQUEST
7 shall ~~be given~~ MAKE AVAILABLE to the department of social serv-
8 ices A COPY OF THAT CONTRACT.

9 (6) The NURSING HOME SHALL ENSURE THAT THE contract ~~shall~~
10 ~~be~~ IS written in clear and unambiguous language and ~~shall be~~
11 IS printed in not less than 12-point type. The form of the con-
12 tract shall be prescribed by the department.

13 (7) The contract shall specify ALL OF THE FOLLOWING:

14 (a) The term of the contract.

15 (b) The services to be provided under the contract and the
16 charges for the services.

17 (c) The services that may be provided to supplement the con-
18 tract and the charges for the services.

19 (d) The sources liable for payments due under the contract.

20 (e) The amount of deposit paid AND THE TERMS UPON WHICH THE
21 DEPOSIT WILL BE HELD AND REFUNDED.

22 (f) The rights, duties, and obligations of the patient,
23 except that the specification of a patient's rights may be fur-
24 nished on a separate document ~~which~~ THAT complies with the
25 requirements of section 20201.

26 Sec. 21775. The department of social services shall
27 continue medicaid funding during the appeal, transfer, or

1 discharge period as provided in section 21774 for those ~~title~~
2 ~~19~~ MEDICAID patients affected by section 21773.

3 Sec. 21799c. (1) A person who violates the following sec-
4 tions is guilty of a misdemeanor, punishable by imprisonment for
5 not more than 1 year or a fine of not less than \$1,000.00, nor
6 more than \$10,000.00, or both:

7 (a) Section 21711.

8 (b) Section 21712.

9 (c) SECTION 21765A(1), (2), OR (5).

10 (D) ~~(e)~~ Section 21771(1) or (6).

11 (E) ~~(d)~~ Section 21791.

12 (2) A PERSON WHO VIOLATES SECTION 21765A(1), (2), OR (5) IS
13 LIABLE TO AN APPLICANT OR PATIENT IN A CIVIL ACTION FOR TREBLE
14 THE AMOUNT OF ACTUAL DAMAGES OR \$1,000.00, WHICHEVER IS GREATER,
15 TOGETHER WITH COSTS AND REASONABLE ATTORNEY FEES.

16 (3) ~~(2)~~ For the purpose of computing civil penalties under
17 this section, the number of patients per day ~~shall be~~ IS based
18 on the average number of patients in the nursing home during the
19 30 days preceding the discovery of the violation.

20 (4) ~~(3) When~~ IF the department finds a violation of sec-
21 tion 20201 as to a particular nursing home patient, the depart-
22 ment shall issue an order requiring the nursing home to pay to
23 the patient \$100.00, or to reimburse the patient for costs
24 incurred or injuries sustained, whichever is greater, and the
25 DEPARTMENT SHALL ASSESS THE nursing home ~~shall be assessed~~ a
26 civil penalty, not to exceed \$1,500.00, or \$15.00 per patient
27 bed, whichever is lesser.

1 (5) ~~—(4)—~~ The department of social services, with the advice
2 of the department of public health, shall promulgate rules for a
3 quality of care allowance formula ~~—which—~~ THAT is consistent with
4 the recommendations of the fiscal incentives subcommittee to the
5 committee on nursing home reimbursement established pursuant to
6 Act No. 241 of the Public Acts of 1975, as described in the
7 November 24, 1975 interim report, in the December 3, 1975 final
8 report, and the November 24, 1976 report of the committee recom-
9 mending appropriate changes in the procedures utilized.

10 (6) ~~—(5)—A—~~ THE DEPARTMENT SHALL NOT ASSESS A civil penalty
11 ~~—shall not be assessed—~~ under subsection ~~—(3)—~~ (4) for a viola-
12 tion of this part for which a nursing home's reimbursement is
13 withheld under subsection ~~—(4)—~~ (5).